

NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

Kotzebue, Alaska 99752

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December 23, 2008

Randy Bates, Director
Division of Coastal and Ocean Management
Alaska Department of Natural Resources
P.O. Box 111030
Juneau, Alaska 99811-1030

Re: ACMP Re-evaluation Comments

Dear Mr. Bates:

Happy holidays, especially one day prior to Christmas Eve. The Northwest Arctic Borough is glad to submit comments on the statutes DCOM has proposed for the ACMP re-evaluation. We are looking forward to this re-evaluation process to improve the program and the opportunity for coastal districts as key stakeholders to provide much needed input for changing the program in beneficial ways to ensure coastal uses are balanced among competing uses and, most of all, ensure respect of the unique way of life of permanent Alaskans.

As you weigh various comments, I encourage you to especially look at comments from rural Alaska as we bring meaningful input as longtime Alaskans and provide valuable insights from our respective communities which need to be included in a statewide program. There are a number of issues that the Northwest Arctic Borough would like to share with you that we hope you will take into serious consideration. In addition, the Northwest Arctic Borough has reviewed the detailed comments submitted by the Mayor Itta of the North Slope Borough, which we endorse, and emphasize the following points.

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A major concern is the proposed changes to AS 46.40.030 and AS 46.40.070, which are new extensive requirements for district plans. The proposed language would for all practical purposes create an over burdensome administrative approval process for coastal districts to establish enforceable policies; and the borough does not support the proposed change as it does not reflect good public policy for a publically funded program. This proposed language represents a major negative impact in the overall changes and re-evaluation process.

These proposed changes to AS 46.40.030 and .070 also introduce novel legal requirements that, for example, prohibit local policies if they are “within the authority” of a state or federal agency. For example, according to the proposed changes a district may not establish enforceable policies for matters authorized by a state or federal agency unless the agency gives approval. Also at the same time, a district may not establish enforceable policies for matters not authorized by a state or federal agency. As you know, the authorities of government agencies are broad and can be very complex, and individual agency’s authority can overlap with another agency’s authority with the extent of that authority limited by land management responsibilities or other permitting powers. I do not see how the Department of Natural Resources will be able to sort this out (let alone coastal districts that are granted just \$17,000 a year with much less resources). This statutory change, which appears to be based upon a flawed legal opinion, would lead to negative ACMP program decisions that reject meaningful district policies that should be part of balanced resource developed that respect local communities and Alaskans input. I would also like to point out that the guidance in this new revised statute for creating policies is all stated in the negative of “do not” and “are not” without guidance what a district policy can be.

Rather than this proposed contemptible statutory change by DCOM, we specifically endorse the language the North Slope Borough has proposed in their comment letter to correct these problems with .070 and other provisions of DCOM’s proposed legislation. The borough expects to have enforceable policies that are both meaningful to the

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residents of this region and demonstrate our connection to the people and communities that functionally operate in the coastal district and reflect the close relationship our Alaskan residents have to this land, the coastal zone and our subsistence way of life.

Another concern is the proposed AS 46.40.075, which requires a 'legislative review of certain coastal resource enforceable policies.' The expectation of a legislative review of district enforceable policies is simply an untried, unreasonable and unrealistic approach. Representative Reggie Joule stated himself on the second day of the official stakeholder ACMP workshop on 12/9/2008 that it was unrealistic to expect our legislature to hear appeals for numerous district enforceable policies which reflect local issues of a very large and unique state. The proposed DCOM process for a legislative review of district enforceable policies is excessive and is not an efficient use of their time nor district's time. There are other much more effective public involvement options to review the approvability of enforceable policies that encourages a more efficient and meaningful outcome.

The borough is also greatly concerned that the DCOM proposed legislation does not include a coastal policy board. It is essential to have a public process in the ACMP which includes a board that is objective and fair. I would suggest the role of the coastal policy board would be to approve coastal district plans, approve changes to ACMP regulations and approve ACMP grant programs. Public involvement is critical to any public program's processes and such a valuable resource to state program administrators that need to be accountable to statewide villages and communities. For the ACMP program in particular, I feel the need for an objective public body, such as a Coastal Policy Council as the North Slope Borough and other coastal districts have repeatedly suggested, to oversee major decisions of the program may be the only way for the department and program to regain the trust of the Alaskan stakeholders.

Under the proposed statutes, DCOM also proposes to completely do away with mediation. The borough has undergone tremendous challenges to get our district plan

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approved with mediation and thus far failed. Nonetheless, if properly conducted, mediation, in our eyes, is an excellent alternative to resolve disputes. It is also a way to meaningfully involve local districts and DNR in discussions that can lead to new understandings and ideas for addressing coastal development issues unique to Alaska. We agree with the North Slope Borough, that in order to be effective, those in mediation must have a neutral, non-judicial appeal as a back-up, such as the Coastal Policy Board (CPB) that the North Slope has also proposed and we concur. Mediation needs to remain an option for coastal districts to work through coastal issues with the state.

While our letter primarily addresses proposed statutory changes, we have a few recommendations for the regulations. The language in 11 AAC 112.270 should be amended to allow districts to establish policies for any coastal use or resource. The Habitats standard at 11 AAC 112.300 should be amended to include upland habitats. Also, we recommend that all activities permitted by the Department of Environmental Conservation be included in the scope of review. Issues raised by industry in the past can be fixed in other ways, perhaps by changing the requirements for what must be submitted with the application packet that initiates the ACMP review.

In closing, the residents of the Northwest Arctic Borough depend on the natural resources that the coastal zone richly provides, including seal, beluga, fish, and caribou. We engage in a valuable subsistence-based economy which is why the ACMP is a great tool to address balanced development and to promote the economic security of lifelong Alaskans that are affected by coastal developments. We can only hope that the State of Alaska will make decisions in consideration of all Alaskans that will protect the established way of life of residents that are dependent on healthy coastal resources. Reflective of this, the borough needs to have local enforceable policies that are both meaningful to the residents of this region and demonstrate our sensitivity and close relationship to this coast and land. We hope that DCOM will take into consideration the meaningful input from the borough and other coastal districts during this holiday season.

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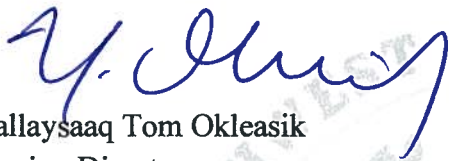
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We look forward to working with the state on issues that will strengthen our already close relationship to the water, land and the resources it abundantly provides.

Sincerely,



Ukallaysaaq Tom Okleasik
Planning Director

cc: Siikauraq Whiting, Mayor, Northwest Arctic Borough
Edward S. Itta, Mayor, North Slope Borough
Representative Reggie Joule
Senator Donald Olson
Tom Irwin, Commissioner, DNR
Dick LeFebvre, Deputy Commissioner, DNR
Joe Donohue, DCOM, DNR
Helen Farr, Office of Ocean and Coastal Resource Management, NOAA
Kill'aq John Chase, Community Planner and Coastal Area Specialist, NAB